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No. 1035

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the final judgment of the district court entered in this case on December 2, 1946. A petition for appeal is presented to the district court herewith, to wit, on January 27, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36

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Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *Crescent Amusement Co.*, 323 U. S. 173

Interstate Circuit, Inc. v. *United States*, 306 U. S. 208

Sugar Institute, Inc. v. *United States*, 297 U. S. 553

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2 and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended, 15 U. S. C. secs. 1, 2 and 4, commonly known as the Sherman Act, are as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

THE ISSUES AND THE RULING BELOW

This is an equity suit brought by the United States in the federal District Court for the Northern District of Illinois against six corporations and one individual charging them with conspiring to restrain and to monopolize interstate commerce in the sale of cabs to the principal cab companies operating in Chicago, New York, Pittsburgh and Minneapolis and in furnishing cab service in Chicago, in violation of Sections 1 and 2 of the Sherman Act. The defendants are Yellow Cab Company (referred to herein as Yellow), which operates "Yellow" cabs in Chicago; Chicago Yellow Cab Company (referred to herein as Chicago Yellow), a holding company owning all the stock of Yellow; Parmelee Transportation Company (referred to herein as Parmelee), which operates cabs between railroad stations in Chicago; Cab Sales and Parts Corporation (referred to herein as Cab Sales), which operates "Checker" cabs in Chicago; Checker Taxi Company (referred to herein as Checker), which holds and leases

to Cab Sales 1,000 taxicab licenses issued by the city of Chicago; Checker Cab Manufacturing Company (referred to herein as CCM), which manufactures in Michigan taxicabs for sale in other States; and Morris Markin, president of CCM.

Upon defendants' motion to dismiss the complaint for failure to state a claim upon which relief might be granted, the district court held that the complaint failed to state a cause of action. An order dismissing the complaint was accordingly entered.

The principal allegations of the complaint may be summarized as follows:

Defendants' conspiracy began in January 1929 when Markin and others initiated a program to merge the more important cab companies operating in Chicago, New York and other cities. One of the principal purposes of this program was to insure that the cab companies brought under common control would purchase all of their cabs from CCM.

As a first step in the conspiracy, Parmelee was organized in April 1929. It was financed in part by CCM, which owns about 62% of its stock. Parmelee acquired the stock of all the companies operating taxicabs in Pittsburgh and it now operates all of the taxicabs in that city through two wholly-owned subsidiaries. It organized a company to operate taxicabs in Minneapolis and its

subsidiary now holds 58% of the cabs licensed in Minneapolis. It also acquired substantially all of the stock of a cab company operating in New York city, and of the 13,000 taxicabs which are now licensed for operation there, a subsidiary of Parmelee holds 2,000.

As to Chicago, Parmelee acquired all of the stock of The Parmelee Company, whose business was transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations, and dissolved this company and took over its business. Parmelee also acquired about 30% of the stock of Chicago Yellow, an acquisition which gave Parmelee control over the management of Chicago Yellow and its subsidiary, Yellow.

Of the Chicago taxicab licenses which were outstanding in 1929, Yellow held 44% and Checker 33%. Checker was a "cooperative" company the stockholders of which were the various owners of "Checker" cabs, who had agreed that Checker should hold the record title of and the city licenses for their cabs. Checker came under the defendant's control through the medium of Cab Sales, a company which was organized in 1930 and which has at all times been managed and operated by Markin. Since 1934 he has owned all the stock of Cab Sales.

In 1930 Checker, in partial settlement of litigation with CCM, agreed that the drivers of

Checker cabs would during the next five years purchase all of their cabs from Cab Sales. CCM thereupon made Cab Sales its exclusive selling agent for such cabs and during the five years of the agreement Cab Sales sold these cabs to drivers at about $400 per cab above the price at which Cab Sales purchased them from CCM. In 1931 Cab Sales borrowed $500,000 from Yellow to finance the acquisition of a majority of the stock of Checker and Cab sales subsequently acquired over 97% of this stock. As cab owners defaulted from time to time on their payments for cabs purchased from Cab Sales, it took over the ownership and operation of the cabs. Since 1941 it has owned and operated all of the cabs for which Checker holds taxicab licenses. These licenses Checker leases to Cab Sales.

Markin, who had a substantial interest in the third largest company operating taxicabs in Chicago, sold his stock in the company to Parmelee in 1930. In 1932 Cab Sales acquired a substantial interest in the company and caused it to suspend operations and caused its drivers to enter into contracts with Checkers.

As a part of their conspiracy, the defendants agreed that all companies operating taxicabs which should be brought under common control should, in their purchases of new cabs, buy exclusively cabs manufactured by CCM. The de-

fendants similarly agreed that Yellow and Cab Sales should not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago. They likewise agreed that Parmelee should not compete with Yellow or Cab Sales in the business of transporting passengers in Chicago and vicinity except by contract with railroads and railroad terminal associations.

In 1929 there were about 5,300 taxicabs licenses outstanding in Chicago. In that year the city adopted an ordinance providing that no additional licenses would be issued except upon a finding of public convenience and necessity. In 1934 further restrictions on issuance of new taxicab licenses were enacted. By 1937 the number of outstanding licenses had declined to 4,071, of which Yellow had 53% and Checker 37%. In that year Yellow and Checker agreed to operate a smaller number of cabs than those for which they held licenses and they took out of operation over 15% of their cabs. They also agreed to induce the City of Chicago to reduce the number of its taxicab licenses to 3,000, of which Yellow would hold 1,500 and Checker 1,000. In December 1937 the city enacted an ordinance providing that if licensees would surrender sufficient licenses to reduce the number to 3,000, no additional licenses (except by way

of renewal or replacement) would be issued and that if a future ordinance should increase the number of licenses, the licensees who had surrendered licenses would have prior right to the additional licenses up to the number surrendered. Yellow, Cab Sales and Checker thereupon entered into a contract under which Checker surrendered 500 licenses and Yellow 571, thereby bringing the number of city taxicab licenses down to 3,000.

In 1945 a large number of veterans applied to the City of Chicago for taxicab licenses. The city then sought to issue additional licenses to them but it was held in a suit against the city brought by Yellow and Checker that their acceptance of the 1937 ordinance constituted a binding contract between them and the city and that the city was precluded from issuing additional licenses until it had replaced those surrendered by Yellow and Checker in 1938.

The district court, considering first the allegations of the complaint relating to transportation by cab of railroad passengers between, to and from railroad stations in Chicago, held that *Pennsylvania Railroad Co. v. Knight*, 192 U. S. 21, established that such transportation is an independent local service preliminary or subsequent to any interstate transportation and that it is not interstate commerce. The court also held that no illegal restraint of such transportation was set

forth since there was no allegation that the defendants had agreed upon the rates to be charged for transporting interstate railroad passengers or that they had furnished insufficient taxicabs for such transportation.

Concerning the allegations relating to restraint and monopolization of interstate sales of taxicabs, the court below believed that only the situation in Chicago required consideration. It said that no "monopoly" in New York or Minneapolis was shown and that the allegations respecting Pittsburgh were "too vague." As to Chicago, the court held the allegations insufficient upon the ground that exclusive dealing agreements for the purchase and sale of goods are a normal business practice which the courts have recognized as not offending against the Sherman Act. The court also held that since only 2,500 cabs out of the many thousand sold in interstate commerce were shown to be restrained or monopolized, the effect on commerce was too unsubstantial to be a violation of the Act.

The court likewise viewed the complaint as necessarily involving an attack upon the validity of the taxicab ordinances of the city of Chicago and it held that the Sherman Act does not authorize such an attack, that *Parker* v. *Brown*, 317 U. S. 341, establishes that the Sherman Act does not embrace a restraint or monopolization flowing from exercise of state or municipal regulatory authority.

THE QUESTIONS ARE SUBSTANTIAL

The complaint in this case describes a conspiracy with two related objectives, (1) acquisition of control over the principal companies operating taxicabs in certain leading cities and (2) engrossment by CCM of the business of selling taxicabs to the companies brought under defendants' control. The court below held that in neither aspect of the conspiracy was a violation of the Sherman Act set forth. The Government's appeal challenges each of these conclusions and we submit that the challenge to each presents questions of law of substance.

It stands presently admitted that the defendants, pursuant to conspiracy, brought under common control companies having 83% of the taxicabs operated in Chicago, 100% of those operated in Pittsburgh, 58% of those operated in Minneapolis and 15% of those in New York City, and that defendants' acquisition of control over these companies had the purpose and effect of excluding all manufacturers of cabs other than CCM from the business of selling cabs to the controlled compa ..es. If, without any acquisition of control, these companies had agreed with each other and with CCM to purchase exclusively from the latter, this would clearly violate the Sherman Act.[1] The

[1] *Montague & Co.* v. *Lowry*, 193 U. S. 38; *Eastern States Lumber Dealers Assn.* v. *United States*, 234 U. S. 600; *Fashion Originators' Guild, Inc.* v. *United States*, 312 U. S. 457, 465; *Associated Press* v. *United States*, 326 U. S. 1, 18–19.

fact that in the instant case engrossment of the business was effectuated by prior purchase of stock control does not, we submit, give sanction to the combination. What violates the Sherman Act depends upon the actual restraint or monopolization effected, not the form which the transaction takes, and the tests are the same whether the restraint or monopolization results from agreement between independent units or from the integration of independent units under common ownership. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360, 376–377.

In *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 719, this Court was equally divided on the question whether an agreement to purchase a particular product exclusively from one manufacturer in return for its agreement to make the product exclusively for this customer violates the Sherman Act. A question of law on which there has recently been a four to four division among the Justices of this Court is clearly substantial. We also submit that the instant case more clearly falls within the prohibitions of the Sherman Act than did the exclusive dealing agreement which was before the Court in the *Bausch & Lomb* case.

The court below, in passing upon the question whether the allegations regarding cab operations in Chicago show a violation of the Sherman Act, ignored the charge of the complaint that it was a

part of defendants' conspiracy that Yellow and Checker would not compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago. We submit that the regular, day-to-day transportation between railroad stations in Chicago of passengers making interstate journeys is interstate commerce. And if the commerce is interstate, the restraint and monopolization resulting from agreement not to compete for the business does not differ in character from other agreements not to compete held to be unlawful under the Sherman Act, such as an agreement to bid collusively on contracts calling for the sale and shipment of goods in interstate commerce (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211). This branch of the appeal from the district court's adverse decision therefore presents substantial questions of law.

We submit, in addition, that the transportation of passengers between, to or from railroad stations in Chicago is interstate commerce (see *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363). The defendants' conspiracy is therefore illegal because it excludes newcomers from this commerce (see cases cited in note 1, p. 7, *supra*). While the exclusion of newcomers from this commerce shown by the allegations of the complaint is the immediate product of restrictions

on issuance of additional taxicab licenses adopted by the city of Chicago, the agreement between defendants to surrender licenses was not authorized by ordinance. Since defendants' conspiracy was thus not confined to action authorized by a State or its municipality, it is not beyond the reach of the Sherman Act under the principles announced in *Parker* v. *Brown*, 317 U. S. 341. The appeal also presents the question whether the doctrine of that case applies where, as in the instant case, the defendants have conspired to induce a municipality to take certain regulatory action and where the defendants, in effectuation of their conspiracy, currently prevent the municipality from making any change in the restrictions imposed by prior ordinance. The questions referred to in this paragraph, and raised by the appeal, seem clearly to be of substance.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

[s] GEORGE T. WASHINGTON,
Acting Solicitor General.

JANUARY 27, 1947.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

(Civil Action No. 46 C 1339)

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

MEMORANDUM

This is an action by the government under Section 4 of the Sherman Act (15 U. S. C. A. Sec. 4) seeking relief against an alleged conspiracy and combination to restrain and to monopolize trade in violation of sections 1 and 2 of that Act. Defendants have filed motions to dismiss the complaint under Rule 12 (b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The action is brought against six corporations and one individual. Checker Cab Manufacturing Corporation manufactures motor vehicles in Michigan for use as cabs. Its president is Morris Markin, a resident of Michigan. The Manufacturing Corporation and Markin will both be referred to hereinafter as "CCM". Chicago Yellow Cab Company, Inc., owns all of the capital stock of Yellow Cab Company, which operates "Yellow" taxicabs in Chicago. Checker Taxi Company holds taxicab licenses issued by the City of Chicago and leases such licenses to Cab Sales and

Parts Corporation which operates "Checker" taxicabs in Chicago. Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts will hereinafter be referred to as "the taxicab operating companies." Parmelee Transportation Company operates vehicles in Chicago to transport passengers and their luggage from one railroad station to another pursuant to contracts with railroads and railroad terminal associations.

The complaint contains many allegations designed to show that CCM under contracts, understandings and stock acquisitions has such control of the taxicab operating companies and Parmelee that the latter are required to purchase their vehicles from CCM. No end is served by here summarizing these allegations. The court assumes for the purpose of the motion before us that CCM so controls the taxicab operating companies and Parmelee.

Although containing only one count the complaint actually charges two conspiracies. It charges, first, that the defendants have conspired to restrain commerce in the transportation by taxicabs of railroad passengers between, to and from railroad stations located in the City of Chicago. It charges, second, a conspiracy to restrain interstate trade in the sale of motor vehicles for use as cabs.

The scope of the first of these charges is all-important. The legality or illegality of any re-

straints alleged in the complaint must be tested solely by their effect on the transportation by taxicab of railroad passengers coming to or leaving Chicago. The government does not claim that any such restraints affect the business of railroads or the transportation of railroad passengers except to the extent stated. The basic question on this charge is, therefore, whether the operating companies, to the extent that they transport by taxicabs interstate railroad passengers between, to and from railroad stations, are engaged in interstate commerce.

This is not the first time this issue has been presented to a court for determination. The United States Supreme Court in *New York ex rel Pennsylvania RR Co.* v. *Knight*, (1904) 192 U. S. 21, held that identical taxicab services were not interstate commerce but an independent local service preliminary or subsequent to interstate transportation. The Supreme Court has frequently referred to that decision and in each instance has treated it as correct. *Swift and Company* v. *United States*, (1905) 196 U. S. 375, 401; *Stafford* v. *Wallace*, (1922) 258 U. S. 495, 528. And, this court is of the opinion that the decision in the *Knight* case is predicated on sound legal principles.

The *Knight* case is not disposed of by the fact, as urged by the government, that the court might have based its decision on other grounds. Nor

do the many decisions under acts such as the National Labor Relations Act and the Fair Labor Standards Act, relied on by the government, weaken its force. These acts extended federal control over a wide area of intrastate activity which affects interstate commerce. Here, however, the question is whether defendants' taxicab operations are interstate commerce. But even under these acts the one case involving taxicab operations held them to be intrastate. *Ridley* v. *General Cab Company*, CCH 6 Labor Cases, 61, 374. Also, in the *Knight* case the court made the following statement:

> As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith.

To prove interstate character, the government points to the fact that defendants' taxicabs render services to interstate railroad passengers. The mere rendering of local services to an interstate passenger cannot transform an intrastate business into an interstate enterprise. To so hold would obviously result in obliterating the historical and sound distinction between the two types of commerce. The government urges as an important element the fact that railroad stations in Chicago

are designed to facilitate the use of taxicabs for the convenience of the interstate railroad passengers. But many railroad stations are also designed to afford easy access to other local services for the convenience of passengers. Thus, in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce. As was stated in the *Knight* case:

> * * * many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply the hay and grain for horses also engaged in interstate commerce? And where will the limit be placed?

The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad

passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies.

No one of the foregoing elements, of course, is determinative. But as the Supreme Court has held, the determination of whether particular commerce is interstate or intrastate is a "practical" matter "drawn from the course of business." *Swift and Company* v. *United States, supra.*

Considering the entire course of business of the taxicab companies, the court concludes that such business, as held in the *Knight* case, is an independent local service preliminary or subsequent to any interstate transportation. In the court's judgment, therefore, the complaint fails to state a claim under the Sherman Act insofar as the transportation of interstate railroad passengers is concerned.

In addition the court is of the opinion that the complaint fails to set forth such facts as are necessary to show that the defendants conspired to or did restrain trade. The existence and legality of that restraint must be determined with respect to the transportation by taxicabs of interstate railroad passengers between, to and from railroad stations in Chicago. The complaint contains no allegations showing a conspiracy directed to, or in restraint of, that commerce. There is no allegation that defendants agreed upon the rates to be charged for the transportation of interstate railroad passengers. There is no allegation that insufficient taxicabs are furnished for the transportation of such railroad passengers. There is no allegation that defendants have otherwise restrained such commerce. The complaint instead proceeds on the theory that defendants conspired to restrain generally the business of furnishing cab service for hire in the City of Chicago and leaves to assumption and inference the effect upon

one small segment of that general business—the transportation of interstate railroad passengers. Such vital elements in the statement of a claim cannot be left to inference and speculation.

The complaint also alleges defendants have conspired to restrain and monopolize interstate trade in the sale of motor vehicles for use as cabs. The complaint proceeds on the theory that CCM has a monopoly of the sale of taxicabs in Chicago alone because the taxicab operating companies held about 80% of the taxicab licenses issued by the City. The complaint does mention three other cities, New York, Minneapolis, and Pittsburgh. There patently exists no monopoly in the first two cities in which CCM subsidiaries operate 2,000 of the 13,000 and 125 of the 214 taxicabs, respectively. The allegations with respect to conditions in Pittsburgh are too vague to determine the situation in that city. But the complaint does not charge that CCM has a monopoly in the manufacture of taxicabs or a monopoly in the general sense of the sale of taxicabs. It is a matter of common knowledge that the large automobile manufacturers produce and sell the great majority of vehicles used as taxicabs.

The State of Illinois has by statute delegated to the City of Chicago (Cities and Villages Act, Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23–28, 10, 27, 51, 78) power to regulate the taxicab industry in Chicago. The City of Chicago has in

turn enacted a series of ordinances governing the licensing and operation of taxicabs in Chicago. (Ordinances of September 25, 1929; May 18, 1934; December 22, 1937; June 26, 1945.)

The court is of the opinion that the charge does not state a claim under these facts. Such restraint as exists in this case necessarily results from the acquisition by CCM of the control of two outlets for purchase of CCM's product. The nature of the restraint is that the outlets are thereby prevented from buying vehicles from manufacturers other than CCM or conversely that manufacturers other than CCM are prevented from selling vehicles to the outlets. Restraints of this nature are not frowned upon by the law. They are common and are inherent in the acquisition by a manufacturing company of outlets regardless of whether the manufacturer creates the outlets or acquires them by purchase or under exclusive agency arrangement. Exclusive dealing arrangements of this nature are normal, usual and customary business practices and their legality under the Sherman Act has long been recognized. *United States* v. *Winslow,* (1913) 227 U. S. 202; *United States* v. *United States Steel Corp.,* (1920) 251 U. S. 417; *Black and White Taxicab and Transfer Company* v. *Brown and Yellow Taxicab and Transfer Company,* (1928) 276 U. S. 518; *United States* v. *Paramount Pictures,* (1946) 66 F. Supp. 323.

The effect of the restraint on interstate commerce is plainly inconsequential. It consists solely of sales of one product by one comparatively small manufacturer to two companies which have about 80% of one type of business in one city in the United States. It consists of sales of 2,500 taxicabs out of many thousands sold in interstate commerce. Such effect is clearly too unsubstantial to meet the test laid down for a violation of the Sherman Act. *Apex Hosiery Co.* v. *Leader,* (1939) 310 U. S. 469; *United Mine Workers of America* v. *Coronado Coal Company,* (1922) 259 U. S. 344; *Glenn Coal Company* v. *Dickinson Fuel Company,* (C. C. A. 4, 1934) 72 F. (2d) 885.

The court, therefore, finds nothing illicit in the nature of the restraint resulting from CCM's acquisition of control of the taxicab operating companies.

The charge must fail, however, for a more decisive reason. If illegality attaches to CCM's acquisition of the taxicab operating companies such illegality must lie in the fact that the operating companies hold 80% of the licenses issued by the city. It is apparent from the relief prayed in the complaint that this suit would not have been filed had CCM controlled only one operating company or had both operating companies held less than a majority of the licenses issued by the city. It is obviously indispensable to the theory of the com-

plaint that the taxicab operating companies hold the great preponderance of licenses issued by the city. The government's theory therefore resolves itself into an attack on the validity of the city's taxicab ordinances or on the validity of the city's issuance of licenses to the taxicab operating companies.

The Sherman Act contains no authority for such an attack on the city's power or exercise of such power. The courts have uniformly held that the licensing and regulation of the taxicab industry is a subject for exercise solely by a municipality under its police power. This court and the courts of Illinois have held Chicago's taxicab ordinances a valid exercise by the city of its police power and they have held that the issuance by the city of a majority of the taxicab licenses to the defendant operating companies in this case does not create a monopoly. *Capitol Taxicab Co.* v. *Cermak* (C. C. A. 7, 1932), 60 F. (2d) 608; *People* v. *Thompson*, (1930) 341 Ill. 166; *Chicago* v. *Dorband*, (1938) 297 Ill. App. 617; *Chicago* v. *Eagle Taxi Co.*, (1933) 273 Ill. App. 614; *Yellow Cab Company* v. *City of Chicago*, Circuit Court of Cook County, No. 46 C 943, unreported, 1946. In *Rudack* v. *Valentine*, (Spec. Term, N. Y. County, 1937) 163 Misc 326, 295 N. Y. S. 976, aff'd (1937) 274 N. Y. 615, 10 N. E. (2d) 577, the court held that the licensing and regulation of the taxicab industry is a valid exercise of a municipality's po-

lice power. The court pointed out that in substantially all cities the taxicab industry is treated as a public utility under local regulations.

It is not for the court to determine whether the city has acted wisely or unwisely in issuing the majority of its licenses to one interest or to two corporations owned or controlled by the same interest. It is a question rather for the determination of the city in the public interest of its citizens. The Sherman Act, as the Supreme Court has held, does not include within its reach such restraints as necessarily flow from the regulation of local problems by local governmental bodies. *Parker* v. *Brown,* 1943) 317 U. S. 341; *Field* v. *Barber Asphalt Paving Company,* (1904) 194 U. S. 618.

With respect to Parmelee, the complaint makes two claims. First, it is alleged that Parmelee will not compete with the taxicab operating companies for the latter's business. This claim must refer to the taxicab companies' business other than the transportation of interstate railroad passengers. Since this remaining business is concededly intrastate business no basis exists for holding this claim within the reach of the Sherman Act. Second, it is alleged that the taxicab operating companies will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of railroad passengers and their luggage. Having in mind a com-

monly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade in this respect. Further, the court is unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation.

For the reasons indicated defendants' motion to dismiss should be sustained.

WALTER J. LA BUY,
Walter J. La Buy, *Judge,*
United States District Court.

U. S. GOVERNMENT PRINTING OFFICE: 1947